Statement

This consolidated Brief on Reargument is submitted on behalf of the Negro pupils and parents who, as private parties plaintiff, initiated these six school desegregation suits involving the public schools of the cities of Bessemer, and Fairfield, Alabama, Jefferson County, Alabama, and Caddo, Bossier, and East Baton Rouge Parishes in Louisiana. In each of the cases, except No. 23,116, *Davis* v. *East Baton Rouge Parish School Board,* the United States of America intervened as a party plaintiff and appealed from a district court order approving a proposed desegregation plan. The private plaintiffs in these cases were permitted to intervene as appellants in this Court. In the *Davis* case, *supra,* the appeal from a district court order approving a desegregation plan was taken by the private plaintiffs.

Several briefs have been submitted before and after the original arguments in these cases. However, in order that the entire Court may have access to a statement of the proceedings and facts in each case, in a single volume, we restate them below. The opinion of the panel of this Court which decided the cases on the original arguments stated that the Court had "carefully examined each of the records" and that: "In each instance the record supports the decree" (Slip Opinion, p. 111). We agree.

I. *No. 23,335, United States, et al. v. Board of Education of the City of Bessemer*

The complaint in this action was filed by Negro students and parents on May 24, 1965, to desegregate the public schools of Bessemer, Alabama (R. 11-19). The City of Bessemer maintained ten schools for the 5,286 Negro and 2,920 white pupils enrolled during the school year 1964-65

(R. 100). The system has 1 white high school (grades 10-12), 1 white junior high school (grades 7-9), 4 white elementary schools (grades 1-6), 2 Negro schools offering grades 1-12, and 2 Negro schools offering grades 1-8 (R. 95-97).

The procedures in the Bessemer desegregation plan presently before this Court adopt with minor modifications pupil assignment procedures utilized by the Bessemer board prior to the plan to maintain a rigidly segregated public school system. Detailed descriptions of these assignment procedures, of other aspects of the system, and of the approved plan follow:

A. Pupil Assignment Policy

Bessemer maintained a dual system of schools, "one set of schools for Negroes and one set for whites," at the time this action was filed (R. 116). One map sets out the attendance zones for each of the 4 Negro schools (R. 95) and a second map sets out zones for each of the white schools (R. 96). When asked at the hearing below if the racial zone maps were "being used at the present time," the Superintendent responded: "To the best of my knowledge, we are still following these maps" (R. 98). Counsel for the board asked that these maps be withdrawn from the court at the conclusion of the hearing because "Dr. Knuckles has told us these are maps we need constantly" (R. 99).

The board also maintained a map showing the residence and race of each student and location of each of the schools within the system, with "red dots showing the location . . . of the Negro pupils" and "green dots indicating the residential location of the white pupils enrolled in school during this year" (R. 105-106).

The superintendent testified that the school system "is geared to placing students in schools that are closest to their neighborhood" (R. 108). Yet, adherence to a policy of strict separation of the races in the schools did not always result in students being so assigned. Superintendent Knuckles further testified:

> Q. Do you have very many students who are at the present time passing by schools which are closest to their neighborhood? A. I am sure we have some.
>
> Q. Do you have any of your white students . . . who are passing by Negro schools to go to white schools? A. I expect there are some.
>
> Q. And vice versa? A. And vice versa, yes sir. (R. 108-109)

Some students were required to pass a school maintained for children of the opposite race and "cross a railroad track and some more than one railroad track" to reach a school maintained for their race (R. 159).

School zone lines were changed periodically as conditions changed, and in some instances the superintendent and the board "have administratively transferred the pupils who live in a particular area from one school to another as the school was built or as a school was added to or particular facilities were abandoned" (R. 146). The superintendent testified that when a particular zone contained more students than the school could accommodate "we just had to arbitrarily assign them to another school" (R. 147).

Through this system of assignments the schools within the City of Bessemer were kept completely segregated. No white students attended Negro schools and no Negroes attended white schools (R. 28).

B. The Plan Approved by the Court Below

On July 30, 1965, the court below entered an order approving with minor modifications the first plan submitted by appellees (R. 64-66). An appeal was taken from that order and on August 17, 1965, this Court vacated the judgment and remanded for further consideration, *United States* v. *City of Bessemer Board of Education*, 349 F.2d 1021 (5th Cir. 1965) (R. 71-72). Thereafter, appellees filed an amended plan (R. 81-84) which was approved by the court below on August 27, 1965 (R. 85-86). The amended plan is the subject of this appeal.

The plan adopts the racial assignment policy based upon a dual set of zones described above, subject to minor modifications. Initially, pursuant to the plan, "all pupils in all grades of the Bessemer system will remain assigned to school to which they are assigned or will be assigned to schools in accordance with the custom and practice for assignment of pupils that have prevailed in the school system prior to the entry of the judgment of the District Court in this case on June 30, 1965, such method of assignment being necessary in order to prevent a disruption of the school system and to maintain an orderly administration of the schools in the interests of all pupils" (R. 45-46).

Students entering the first grade are specifically required to report to the elementary school located in the zone *maintained for their race*—Negro students reporting to Negro schools and white students reporting to white schools (R. 44). Only after this segregated racial assignment procedure may "an application may be made by the parents for the child's assignment to any school (whether formerly attended only by white children or only by Negro children)" (R. 44).

Similarly, students in all other grades are initially assigned to segregated schools maintained by appellees for

students of their race (R. 45).[1] Once assigned to these schools, students in grades 1, 4, 7, 10 and 12 during the school year 1965-66, students in grades 2, 3, 8 and 11 during the school year 1966-67, and students in grades 5, 6 and 9 during 1967-68 may apply for transfer "to a school heretofore attended only by pupils of a race other than the race of the pupils in whose behalf the applications are filed" (R. 43-44, 88-83). Transfer forms must be picked up, completed, and returned to the superintendent's office during the designated transfer period (R. 82).

Transfer applications will thereafter "be processed and determined by the board pursuant to its regulations as far as is practicable" (R. 44).[2] No regulations were ever introduced, and on cross-examination the superintendent was unable to say what regulations were referred to by

---

[1] Q. Am I correct that the plan in essence will assign particular schools on the basis of race? A. Most of the pupils in Bessemer with the exception of the first graders are presently assigned to schools they are enrolled in and their records are there.

Q. Even in the grades you are desegregating you contemplate they will attend the school that heretofore has been for their race unless a transfer application is filed and approved? A. That is correct. (R. 264)

[2] Prior to the adoption of the plan and the possibility of desegregation of the schools, the board liberally granted transfers.

Q. Is it fair to say you granted that request more or less as a matter of course as long as there was capacity in the school to which they were transferring? A. I think that is true. We attempted to accomodate people where we didn't overburden the school, the classes or the teachers. (R. 148)

• • •

Q. Mr. Knuckles, you have testified in answer to some of my questions about transfers from one zone to another. Have they been initiated normally by either a letter or a telephone call? A. Yes, sir.

Q. No particular form being used? A. No form.

Q. And there has been no time limit for submitting them to the board? A. No, but I did tell you we have discouraged transfer during the school year.

Q. After school is started? A. Yes, sir.

the plan or their subject, except that they were "general regulations under which we have operated for a long time" (R. 260).

The above described transfer requirements do not apply to Negro students applying for transfers from one Negro school to another Negro school or to white students applying for a transfer from one white school to another white school.

> The Court: I think this plan after the first paragraph only refers in cases where Negro pupils apply to transfer to schools heretofore attended only by white pupils in these classes and vice versa. I think that is the plan.
>
> Q. Is that the way you expect to administer the plan? A. Yes, sir.
>
> Q. So that procedure will be used only when a Negro applies to attend a white school or a white applies to attend a previous Negro school? A. In these grades. (R. 261)

Students new to the system are similarly assigned on the basis of race.[3] The plan is silent and the board is undecided on how applications to overcrowded schools will be processed.

> Q. If a Negro child applies for the Bessemer Junior High School [a white school] in the seventh grade, a

---

[3] A. They will appear at a school to enroll and will abide by the same regulations. If a child asks to transfer to the school of another race and it is after the deadline date, I would assume that he, like other children who let the deadline pass for this time, just wait until his grade is open at another time.

Q. Dr. Knuckles, a white child moving into the school district and is due to enter the seventh grade will automatically go into the seventh grade without making out any papers at all in a white school? A. A Negro child would do the same thing in a Negro school. We are proposing in this instance to follow the custom that has been followed for some time in the interim period. (R. 265)

desegrated [sic] grade, and lives closer to Bessemer Junior High School than white children who will seek enrollment in the Junior High School, is there any decision which will have priority under the plan? Which will have priority if there isn't room for both? A. That question has not been determined.

Q. You don't know? A. That is correct.

Under the plan students will not be permitted to transfer from a school to which they are racially assigned to a school maintained for children of the other race to take a course not offered at their school unless the student is enrolled in a grade reached by the plan.[4]

The plan provides for notice through publication in a local newspaper. No individual notices are contemplated (R. 266).

C. Faculty and Administrative Assignments

The plan makes no provision for non-racial faculty assignments.

The board employs 285 classroom teachers, 175 Negro and 110 white (R. 115). For the 1964-65 school year the board had a teacher turnover rate of 11.85% (R. 119). The superintendent testified that all Negro teachers in the system have met the minimum requirements of the board and that they possessed "the same or similar qualifications as . . . white teachers" (R. 122, 123).

The faculty remains totally segregated with Negro teachers instructing Negro students and white teachers

---

[4] Q. And it [the transfer application] will be considered even though the child is in a grade that has not yet been reached by the plan? A. I think we will live with and operate under the provisions laid out in this plan during this interim period.

Q. And that is your answer to that question? A. Yes, sir. (R. 267)

instructing whites (R. 120). The board has considered desegregating the faculty but has not reached a conclusion "simply because the request had not come from parents at the time for the assignment of Negro children to schools other than those they were attending" (R. 118-119).

Teachers were freely assigned by the board when such transfers met the administrative convenience of the district. "[W]e had three rooms in this small school and we closed them and moved the children to one of the larger schools and moved the teachers and consequently we saved the operational cost of that building" (R. 244).

Faculty meetings are held on a segregated basis (R. 251). Administrative and supervisory staff is also segregated. Of 10 administrators employed by the board, 9 are white. The one Negro administrator is in charge of Negro schools (R. 116) and is provided an office apart from the other administrators in a Negro school. No Negroes work in the central office (R. 118).

D. Inequality

The record contains many examples of the inequality between Negro and white schools, including:

1. *Pupil-Teacher Ratios* (R. 162-164):

Negro High Schools	*White High School*
Carver 25 "plus"/1	Bessemer H. S. 19.08/1
Abrams 25/1	

2. *Library Books per Pupil* (R. 164-165):

Abrams 8/1	Bessemer H. S. 19.08/1
Carver 3.17/1	

3. *Elective Subjects Offered in High Schools*

The superintendent admitted that more electives were offered in the white than the Negro high school but attributed this disparity to "community pressure" (R. 166). Latin, Spanish, and two years of French are offered in the white high school; the only language taught in the Negro high school is one year of French. Journalism is taught in the white but not the Negro schools (R. 167-168, 229, 233-234).

The plan makes no provision for equalizing the facilities between Negro and white schools.

E. School Construction

The Bessemer school district contemplates expending approximately $460,000 for rebuilding or adding to existing segregated facilities (R. 125). The plan makes no provision to require that a rebuilding program be designed so as to aid in abolishing the dual system.

F. Other Matters

The plan contains no provisions for individual notice to pupils, no provision with respect to locating new school buildings or additional facilities in such a manner as to eliminate segregation, no provisions with respect to nondiscrimination in various school connected or sponsored activities or in extracurricular activities, and no provisions with respect to periodic reports to the court concerning desegregation.

G. Administration of the Plan

In the first year of the plan, 1965-66, only 13 of approximately 5,284 Negroes attended formerly white schools. (Affidavit of St. John Barrett attached to Motion to Con-

solidate and Expedite Appeals in these cases, filed in this Court April 4, 1966.) In the second year of the plan, the current 1966-67 term, about 64 Negro pupils attend formerly white schools. (Information supplied to intervenors and appellants by U. S. Department of Health, Education and Welfare.)

II. *No. 23,345, United States, et al. v. Jefferson County Board of Education*

This action was filed June 4, 1965, by Negro students and parents against the Jefferson County Board of Education requesting that the board be enjoined from continuing to operate a system of dual and unequal public schools (R. 9-16). The Jefferson County Board of Education maintains approximately 117 schools for 45,000 white students and 18,000 Negro students (R. 80).

The procedures incorporated in the plan for desegregation approved by the court below (R. 30-37, 66-68), adopt with minor modifications the pupil placement procedures utilized by the Jefferson County Board of Education since 1959 to maintain a rigidly segregated public school system. Descriptions of these pupil assignment procedures, of other aspects of the system, and of the plan follow.

A. Pupil Assignment Procedures

From 1959 until adoption of the plan under consideration in 1965 the Board assigned all pupils pursuant to a pupil placement plan (R. 96-107). During this period the district remained completely segregated. On June 22, 1965, Superintendent Kermit A. Johnson testified that "at the present time" Negro and white children are separated within the school district.[5] Total separation of the races

---

[5] Q. Heretofore, and at the present time, it is the policy of the Board of Education to separate Negro and white children in the school; isn't that true? A. We have had them separated, and there has not been any

within the Jefferson County School District was effected by utilizing the following pupil assignment procedures:

a. *Assignments:* Students entering the first grade, students newly moving into the jurisdiction of the board, and students residing within the district who have been attending school in another "school community" [6] were "accepted, approved and enrolled" by a principal to his school upon determining that the student resides in his "school community" and that the student "would normally attend his school." [7] (R. 101-102). Without exception, students assigned to schools they "would normally attend" resulted in Negroes being assigned to Negro schools and whites being assigned to white schools (R. 164).

---

other operation up until this point. I would hesitate to say the policy of the Board, because we have not had an application up until this time.

Q. But the Board has never authorized you— A. Never taken the initiative for it or authorized me to make any changes. (R. 94)

[6] Dr. Johnson described how a principal would define the boundaries of his "school community" as follows:

A. They are not defined except those who live relatively close to the school and then there is a broad area there where they might go to his school or some other school and this is a case where he would raise the question whether he should or shouldn't take such students.

Q. You state the only way the principal of any school would know what pupils reside in his school community is on the basis of addresses of the students already in school and who had attended the school in the past? A. That is one of the best guides. He doesn't have a definition of a school community. It is a general thing. We don't have the geographical zones. In general it is always the closest to his school would go to his school. (R. 163)

[7] "How would a principal of a white school, elementary school, know who would normally attend his school? What students would normally attend his school? A. Well, there would be the brothers and sisters of the students he had who lived in that general area.

Q. Assuming a Negro child or a white child lived next door to one another, would that child be a person the principal would consider normally would attend his school? A. In the past they would not come under the general definition of "normally attending that school." (R. 163-164)

b. *Transfers:* Students who desired to attend a school other than the one they "would normally attend" (a school provided exclusively for students of the white or Negro race) or the school within his "school community" (the school nearest his home) were required to apply for a transfer (R. 101-104). Requests for transfers were granted only by the Central Office (R. 101-104). Seventeen "factors" were considered by the Central Office in evaluating transfers.[8] The list includes such matters as "home environment," "severance of established social and psycho-

---

[8] The 17 factors (R. 103-104):

"Assignment, transfer and continuance of pupils; factors to be considered—

1. Available room and teaching capacity in the various schools.
2. The availability of transportation facilities.
3. The effect of the admission of new pupils upon established or proposed academic programs.
4. The suitability of established curricula for particular pupils.
5. The adequacy of the pupil's academic preparation for admission to a particular school and curriculum.
6. The scholastic aptitude and relative intelligence or mental energy or ability of the pupil.
7. The psychological qualification of the pupil for the type of teaching and associations involved.
8. The effect of admission of the pupil upon the academic progress of other students in a particular school or facility thereof.
9. The effect of admission upon prevailing academic standards at a particular school.
10. The psychological effect upon the pupil of attendance at a particular school.
11. The possibility or threat of friction or disorder among pupils or others.
12. The possibility of breaches of the peace or ill will or economic retaliation within the community.
13. The home environment of the pupil.
14. The maintenance or severance of established social and psychological relationships with other pupils and with teachers.
15. The choice and interests of the pupil.
16. The morals, conduct, health and personal standards of the pupil.
17. The request or consent of parents or guardians and the reasons assigned therefor."

logical relationships" and the "morals, conduct, health and personal standards" of the pupil requesting transfer (R. 103-104, 158). Applications for "transfers"[9] required the signature of both parents, the occupation and name of the employer of both the students' mother and father or guardian, the race of the applicant. This information was to be included upon a transfer application and submitted to the Superintendent's Office. In considering transfer applications:

> "[T]he superintendent may in his discretion require interviews with the child, the parents or guardian, or other persons and may conduct or cause to be conducted such examinations, tests and other investigations as he deems appropriate. In the absence of excuse satisfactory to the superintendent or the board, failure to appeal for any requested examination, test or interview by the child or the parents or guardian will be deemed a withdrawal of the application." (R. 100).

Superintendent Johnson testified that he never notified parents, students or anyone else in the County that Negro pupils could request assignment to a white school (R. 143). No Negro ever applied for a transfer to an all-white school (R. 94). During 1964-65, 200 requests for transfer were made and 95% were granted (R. 157), but none of these were requests for desegregation (R. 94). No transfer period was designated; requests could be made at any time (R. 93).

c. *Reassignments:* Once enrolled, either by assignment or transfer "[A]ll school assignments shall continue without change until or unless transfers are directed or ap-

---

[9] Plaintiffs' Exhibit 2-A (R. 97-98).

proved by the superintendent or his duly authorized representative." (R. 99). Negro elementary school graduates were automatically assigned to a Negro junior high school and Negro junior high school graduates were automatically assigned to a Negro senior high school. Similarly, white students were automatically assigned on a racial basis.[10] The district specifically recognized these automatic assignments or "feeder" arrangements: "An application for Assignment or Transfer of Pupils Card must be filled out for each pupil entering your school for the first time either by original entry or transfer *except pupils coming from feeder schools.*" (R. 101) (emphasis supplied). Thus students were initially assigned to segregated schools and thereafter locked into these assignments. This lock-in effect continued on throughout the students' public school career.

Assignments—whether through transfer, reassignment or initial assignment—were all made to schools which were admittedly constructed exclusively for students of the white or Negro race (R. 130-131). Even as to proposed future school construction, the Superintendent was able to identify the race of the students for whom schools were planned but not yet constructed (R. 131-132). Racial dot maps, indicating the race and residence of every student within the district, are maintained by the Board (R. 89).

---

[10] Q. What about students who are, for example, in the sixth grade going to the seventh grade in another school that is separate and distinct? A. Their names are passed over to the high school principal from the elementary principal and their permanent records kept in the individual folders. Every child has a folder with his records in it. They are passed on to the high school and by that procedure the principal knows the number and who it is he is expecting.

Q. That is an automatic process? A. That has been the way it has operated in the past. (R. 195)

B. The Plan Approved by the Court Below

On July 22, 1965 the court below entered an order approving the first plan submitted by appellees (R. 52-53). The United States appealed that order and on August 17, 1965 this Court vacated the judgment and remanded the cause for further consideration. *United States* v. *Jefferson County Board of Education*, 349 F.2d 1021 (5th Cir. 1965). Thereafter appellees filed an amended plan (R. 66-68) which was approved by the court below on August 27, 1965. This amended plan is the subject of this appeal.

The amended plan adopts the pupil assignment procedures discussed above—procedures which effectively perpetuated a totally segregated dual system of schools—subject to the following modifications:

1. Every student is initially assigned to a segregated school. Students entering grades 1, 7, 9, 11 and 12 during school year 1965-66, grades 2, 3, 8 and 10 during 1966-67 and grades 4, 5 and 6 during 1967-68 may therafter apply for a transfer from the segregated schools they are initially assigned to. Transfer applications are to be considered in light of the "factors" set out in footnote 8, *supra*.[11] Transfer applications must be picked up and completed application forms must be deposited at the office of the superintendent (R. 67).

2. Students entering grade 1 shall register at schools provided for students of their race—Negro students at Negro schools and white students at white schools. Any entering first grade student may apply for a transfer to another school by following the steps set out in para-

[11] White students are thereby insured of space in the formerly white schools. Applications for transfer by Negro students are to be considered in light of the space available at the school applied for. A ground for rejecting an application is overcrowding. See footnote 8, *supra*.

graph 1 above only after registering at a segregated school (R. 164).

3. Negro students new to the district may attend a school formerly provided for whites only if the student is entering a grade being desegregated under the plan (R. 213).

4. Notice of the plan shall be published three times in a newspaper of general circulation within the county (R. 34).

Superintendent Johnson was asked:

> Q. How then does this plan change the method of assignment which by your testimony has not resulted in any Negro attending any white school and white attending any Negro school? A. The biggest change I can think of is this will be the first time we have advertised the fact in the daily newspapers that they may do this and the requests will be considered seriously and probably approved. We have never done that before and this would be a change (R. 162).

Appellees' plan permits Negroes to transfer out of the segregated schools to which they are initially assigned, providing they submit a request for transfer on a form which they must pick up at, and after completion deliver to, the superintendent's office; and, they are not disqualified by one or more of the 17 tests set out in footnote 8, *supra*.

Superintendent Johnson's justification for initially assigning all entering Negro first graders to Negro schools is "we feel this would be the logical place for him to go. His brothers and sisters have gone there in the past and he would be in an atmosphere of people he had known

in the past and we think it is the easiest way for him to make his wishes known" (R. 164).

C. Faculty Assignments

The plan contains no provisions for ending faculty assignments based on race.

The board employed a total of 2,268 school teachers, including approximately 600 Negroes (R. 118). All Negro teachers possess qualifications required by the school board (R. 121); 35 white teachers failed to fulfill the school board's minimum requirements (R. 136-137). Negro teachers teach only Negro students (R. 121). White teachers teach only white students (R. 122). Negro supervisory personnel are confined to supervising Negro students and schools (R. 122) and are provided offices apart from white supervisory staff (R. 123, 144). Teacher turnover within the system averages approximately 13% per year (R. 120). Dr. Johnson testified that the 2,200 teachers in the system were qualified to each any child in the system within their subject specialty but that "the main problem" to teacher desegregation would be "acceptance on the part of the parents" (R. 135), and Negro teachers would encounter difficulties in teaching white students "because of the traditions and practices of our people up until this time" (R. 144).

D. Bus Transportation

The plan contains no provision for desegregating transportation facilities.

The 253 buses maintained by the district were operated on a segregated basis (R. 123-124) pursuant to separate route maps—one setting out routes for Negro students and a second for white students. These routes overlapped each other in some instances (R. 127-128).

E. Inequality in Facilities for Negroes

The plan contains no provision for eliminating various tangible inequalities in the facilities for Negroes and whites.

The superintendent testified that although there is only one vocational school for white boys, Negro high schools have comparable vocational subjects not offered in white schools (R. 146). The only high school not accredited by the Southern Association is Negro Praco High which the superintendent said had not applied for an accreditation (R. 220). The Negro Rosedale school has grades 1-12; white Shades Valley school has grades 10-12 (R. 221). The two schools are about half a mile from each other. Rosedale has five or six acres; Shades Valley has about twenty acres. Shades Valley has an auditorium, a stadium and a separate gymnasium; Rosedale lacks a stadium and a gymnasium (R. 221-222, 232).[13] Although the superintendent could name five white schools having summer school sessions, he could not "recall" other schools having such sessions (R. 232). Negro Gary-Ensley Elementary School has outdoor toilet facilities (R. 234). In Negro Docena Junior High School, there are pot-bellied stoves rather than central heating. Students must go a block away to use indoor toilet facilities (R. 233-34). The superintendent could not recall a Negro school which had a stadium with seats and lights. He stated that Negroes have not wanted to play football at night (R. 235). Most stadiums and lights, including an $80,000 stadium at white Berry High School, have been provided, according to the superintendent, by citizen efforts (R. 235-36). He did state, however, that the school system gives assistance to

---

[13] By way of contrast to the Rosedale-Shades Valley situation, the superintendent testified that Negro Wenonah *High* School had facilities superior to white Lipscomb *Junior High* School (R. 240-41).

such efforts by grading the ground and furnishing the light fixtures (R. 236).

An appendix to Intervening Plaintiff's Exhibit No. 1, shows that of the 79 white and 32 Negro schools listed, 81.3% of the Negro schools and only 54.4% of the white schools had a student enrollment above capacity. Thus 33.3% of the Negro students (or 4,587 Negroes) were enrolled in schools having over capacity population, while only 10.1% of the white students (or 4,125 whites) were enrolled in such schools. The United States also proved that 45.6% of white schools but only 18.7% of the Negro school enrollments were under capacity (R. 203).

F. Others Matters

The plan contains no provisions for individual notice to pupils, no provision with respect to locating new school buildings or additional facilities in such a manner as to eliminate segregation, no provisions with respect to non-discrimination in various school connected or sponsored activities or in extracurricular activities, and no provisions with respect to periodic reports to the court concerning desegregation.

G. Administration of the Plan

In the first year of the plan, 1965-66, only 24 of approximately 18,000 Negroes attended formerly white schools. (Affidavit of St. John Barrett attached to Motion to Consolidate and Expedite Appeals in these cases, filed in this Court April 4, 1966.) In the second year of the plan, the current 1966-67 term, about 75 Negro pupils attend formerly white schools. (Information supplied to intervenors and appellants by U. S. Department of Health, Education, and Welfare.)

III. *No. 23,331, United States, et al. v. Fairfield Board of Education*

The board maintains nine public schools in the City of Fairfield, Alabama which serviced a total school-age population of 3,095 children during the 1964-65 school term. Of this number 2,273 were Negro and 1,822 were white (Intervenor's Exhibit No. 3).

By long term policy and practice, the board segregates Negro school children from white school children through the use of dual racial school zones (R. 182, 183, Intervenor's Exhibit 3). In 1954 Negro parents petitioned the board to desegregate the schools and again in May, 1965, Negro parents petitioned for desegregation. The board did not respond to either petition (R. 125-27, 220-23). On July 21, 1965, Negro parents and school children brought suit against the board asking for a preliminary and permanent injunction against continuing segregation of students and teaching staffs (R. 14-23). The district court found there was an illegally segregated system in Fairfield (R. 84), and pursuant to a court order the board filed a Plan and later an Amended Plan for Desegregation of Fairfield Schools System (R. 59).[13]

---

[13] On August 17, 1965, the board filed a Plan for Desegregation of Fairfield School System (R. 48), which the court failed to approve. This first plan provided in part that

(1) Negro children in the 9th, 11th, and 12th grades would be permitted to apply for transfers which transfers would "be processed and determined by the board pursuant to its regulations . . ." (R. 49).

(2) Negro children entering the 1st grade would be assigned to Negro schools, but if both parents accompany the child and sign an application on the first day of school, the child would be permitted to apply to a white school (R. 50, 151-155).

(3) Applications to be acted upon for the 1965-66 term had to be filed at the office of the board between 8:00 A.M. and 4:30 P.M. on August 30, 1965 (R. 50, 151).

(4) During the 1966-67 terms, the 2nd, 3rd, 8th and 10th grades would be desegregated. During the 1967-68 terms the remaining 4th, 5th, 6th

The amended plan, which the district court approved, provides that:

(1) Negro students in the 7th, 8th, 10th and 12th would be allowed to apply for transfer to white schools if their applications were submitted to the board on or before August 30, 1965, the applications to be processed by the board "pursuant to its regulations" (R. 60).

(2) Negro children entering the 1st grade must attend a Negro school unless the parents of the child on the first day of school apply for his assignment at a white school (R. 61).

(3) Applications of Negro children for admission to white schools or white children to Negro schools are to be reviewed by the superintendent "pursuant to the regulations of the board" (R. 61). (A similar process is not required for applications of Negroes for transfer to Negro schools or white children to white schools.)

(4) During the entire month of May 1966 applications by Negro children for transfer to white schools in the 2nd, 3rd, 9th, and 11th grades for the 1966-67 school term will be accepted. (No provision is made for publication of notice prior to May of 1966) (R. 61-62 and 157-158).

(5) During May of 1967 applications by Negro students for transfer to the remaining segregated 4th, 5th, and 6th grades will be accepted by the board for the 1967-68

---

and 7th grades would be desegregated. Applications by students entering desegregated grades would be accepted from the period of May 1 through May 15 preceding the September school term opening for the desegregated grades (R. 50-51).

(5) Unless Negro students applied for and obtained transfer, they would be assigned to Negro schools (R. 51).

(6) The Board would publish in a newspaper of general circulation the provisions of the plan on three occasions prior to August 30, 1965 (R. 51).

school term. (No provision is made for publication of notice prior to May of 1967) (R. 62 and 157-158).

(6) Except for those students applying for and receiving transfer, the schools within the Fairfield system will remain segregated.

(7) One notice of the plan is to be published for three days prior to August 30, 1965 (R. 63).

The plan is silent as to admission of named plaintiffs, desegregation of faculty and extracurricula activities, abolition of dual zone lines, and filing of progress reports with the Court. The plan also does not mention the construction and location of new schools and their effect on desegregation.

Under the plan, transfer applications are not granted as a matter of course, but the board, in its discretion, may deny transfer (R. 149, 166).

As understood by school officials, the plan requires both parents request transfer to a white school before an application will be considered (R. 150-152). This is also true for students applying to the first grade, although they are required to present themselves at schools with an application signed by both parents and application forms are not available prior to the time of initial enrollment (R. 153). Transfer forms are distributed to principals of schools in Fairfield but are not distributed to parents or students unless a request is made of the principal (R. 154). A Negro unable to obtain certain courses because they are taught only in the white schools will not be considered for transfer unless the plan covers the grade in which he is enrolled (R. 159). The plan is also silent as to the standards to be applied to transfer requests from students moving into the district subsequent to the transfer period (R. 158).

Prior to desegregation the board permitted applications for transfer during a three-month period but the desegregation plan reduces this period (R. 145). When asked by the district judge to explain why "such a restrictive period" had been decided upon the superintendent stated:

> My reaction to that point would be we are moving, it seems, from a segregated school to an integrated school system, and the rules of the game are just going to be different in the future from what they have been in the past (R. 145).

The record shows that the tangible facilities and services available at the Negro and white schools are not equal. The white schools in the City of Fairfield are organized on a 6-3-3 plan, i.e, the first six grades in an elementary school; the seventh, eighth, and ninth grades in a junior high school; and the tenth, eleventh, and twelfth grades in a senior high school (R. 87, 96, 189-190). Although the 6-3-3 system is thought to be the most educationally sound school-organization plan by the school authorities, Negro schools are not organized on a 6-3-3 plan (R. 87, 96, 189-190, 192).

The teacher-pupil ratios for the 1964-65 school term at the various schools are these:

Negro	*White*
Grades 1–6	
Robinson 34/Teacher	Forest Hills 26/Teacher
Englewood 25/Teacher	Donald 26/Teacher
Grades 7–9	
Interurban 35/Teacher	Fairfield Junior High 28/Teacher
Grades 10–12	
Industrial High 29/Teacher	Fairfield 20/Teacher

(Computed from Intervenor's Exhibits No. 3)

The plant facilities provided for the Negro children are inferior to those provided for white students. The buildings are in disrepair (R. 217-218, 207-210); the lavatory facilities are unusable, in part, or otherwise of inferior quality or condition (R. 108-109 and Defendant's Exhibits 7 & 8). Vermin and ants have been found in eating facilities (R. 164-167, 218) and there is little recreational area provided around the Negro schools while each white school is provided with ample grounds (R. 91-93, 97, 98, 210, 211, 212, 218). The per pupil values of the plant facilities of the Fairfield school system are these:

Negro		*White*	
Robinson Elementary	$ 258	Donald Elementary	$ 743
Englewood Elementary	492	Forest Hills Elementary	920
		Glen Oaks Elementary	817
Interurban Junior High	130	Fairfield Junior High	699
Industrial High	1,525	Fairfield High	2,476

(Computed from Defendant's Exhibit No. 11)

Numerous courses which are offered to the white students in the junior and senior high schools are not offered to the Negro students in comparable grades in the various Negro schools (R. 90, 131-132, 215, 201). A full-time guidance counselor was provided for the white students at Fairfield High School and not for the Negro students at Industrial High School (Intervenor's Exhibit 3).

On August 23, 1965, the District Court overruled the objections of the Negro plaintiffs and the United States and approved the amended plan of the board (R. 65). On September 8, 1965, the court formalized its findings and ordered the desegregation of that system pursuant to the amended plan (R. 67-72). On August 20, 1965, the court rejected the objections raised by the Negro plaintiffs and the United States (R. 84). An attempt was

made to show that the inferior condition of the Negro schools should have some effect upon the rate of desegregation and the provisions of the plan, but the district court held this evidence to be irrelevant (R. 169-170).

On October 22, 1965, the United States filed a Notice of Appeal from the order of the district court overruling its objections and approving the plan of the Fairfield Board of Education (R. 73).

During the 1965-66 school year only 31 of 2,273 Negroes attended formerly all-white schools.[14] The Department of Health, Education and Welfare informs intervenors and appellants that a total of 49 Negroes attend white schools during the present school year. None of the system's 1,779 whites attended formerly Negro schools.[15]

IV. *No. 23,274, United States, et al. v. Caddo Parish School Board*

There are approximately 72 schools under the jurisdiction of the board (R. 191) which includes the city of Shreveport and rural areas of the parish. Attending these schools are approximately 55,000 children of whom 24,000 are Negroes (R. 191, 189). The board employs approximately 2,200 teachers (R. 191).

Racial separation within the system was maintained through the use of dual attendance zones (R. 69, 81). No Negro child attended any school in which white children were in attendance; no Negro teacher was employed at any school at which white children were in attendance (R. 74-75, 81, 91-92). Athletic facilities and bus transportation were segregated (R. 107-08, 110-12).

---

[14] Affidavit of St. John Barrett attached to Motion to Consolidate and Expedite Appeals filed April 4, 1966.

[15] *Ibid.*

After the decision of the Supreme Court in *Brown* v. *Board of Education*, the board made no effort to end segregation in the schools, being of the opinion that it had no duty or responsibility to do so until, and only to the extent that, it was so ordered by a court of the United States (R. 87-89).

On March 23, 1965, Negro school children and their parents notified the board that they and other Negro children desired to attend the public schools of the Parish without discrimination on the basis of their race (R. 60). The board replied that it had "gone the extra mile" in its efforts to provide the best education for all students, but took no affirmative action to desegregate or honor the request of these Negro children and their parents (R. 62, 73).

On June 14, 1965, the district court found that the school board had operated a compulsory segregated system, enjoined the board from continuing and maintaining a racially segregated school system, and ordered the board to submit a plan to desegregate the schools of the parish (R. 133-36). The court stated that it issued the decree "not willfully or willingly, but because we are compelled by decisions of the Supreme Court . . . [and] . . . the Fifth Circuit . . ." (R. 131). The board submitted a desegregation plan on July 7, 1965 (R. 138-50). Objections were filed July 21, 1965 (R. 158-60) and hearing was held on the objections August 3, 1965 (R. 161 et seq.).

The board first proposed a plan in which students, after being initially assigned on the basis of race, would be permitted to request transfer to the school closest to their residence (R. 141). It was established at the hearing that in many instances this would result in Negro children applying for transfer from one Negro school (the original

assignment) to another Negro school (the school closest to residence) (R. 273-274).

As a result of the hearing, the plan was approved, as modified, and incorporated into an order by the District Court August 3, 1965 (R. 291-98). On August 20, 1965 the district court altered the plan in light of the decision of this Court in *United States* v. *Bossier Parish School Board*, 349 F.2d 1020 (August 17, 1965) (R. 300-04).

The plan as finally approved provides for transfer applications for grades one, two, eleven and twelve during the 1965-66 school year, remaining grades to be covered during the 1966-67 and 1967-68 terms (R. 303-04). All initial school assignments of children entering the first grade and those presently enrolled from prior years, would "be considered adequate" subject only to these transfer provisions (R. 291-95).

The community is to be advised of the plan by publication in a local newspaper advising of the right to request transfers. There are to be no individual notices.

Negro children in the covered grades could apply for transfer to white schools only if they applied within a five-day period extending from August 9, 1965 through August 13, 1965, although prior to issuance of the plan transfer applications were permitted throughout the school year (R. 85, 95, 96). Application forms would not be distributed to all students but would be available from principals on request.

Transfer applications would be granted if in "the best interest of the child" and if applicants met transfer criteria (R. 182, 292-94) such as available space,[16] age of the pupil as compared with ages of pupils already attending

[16] All schools in the Parish are overcrowded (R. 258-59, 281).

the school to which transfer is requested, availability of desired courses of instruction, and an aptitude test (R. 147, 217, 243-48). These criteria are part of "the procedures pertaining to transfers currently in general use by the Caddo Parish School Board" and are incorporated in the plan (R. 292). An interview may be required and if parents fail to attend the transfer application is considered withdrawn (R. 145, 146).

The board specifically refused to obligate itself to provide busing for transfer students to formerly all-white schools although in some cases this would require students to arrange trips of about 19 miles (R. 70, 143, 206).[17]

The board was granted the right to reassign a transfer applicant to a "comparable" school nearer his residence. However, "comparable" is not defined in the plan.

Students moving into the parish are initially assigned according to race to formerly all-white or all-Negro schools (R. 177-78, 295).

The order did not provide for assignment of named plaintiffs to white schools or for desegregation of faculty, extracurricular activities or transportation facilities. Progress reports to the court are not required. A spring preregistration of future first graders "is very important" (R. 95, 94) to administration of the system but the plan is silent regarding its desegregation. The plan does not mention the construction and location of new schools and their effect on desegregation.

During the first year of the plan's operation, only one Negro child of the 24,457 attending public schools in Caddo

---

[17] There was testimony that all or nearly all the white children from the rural area of Caddo Parish were bussed into Shreveport from as much as 19 miles away. Rural Negro children were provided with three Negro high schools located at various points about the county closer to their residence than the Shreveport schools (R. 274-75).

Parish (of whom approximately 1,720 are entering first-graders) has been admitted to a formerly white school (R. 78). (See the affidavit of Mr. St. John Barrett attached to motion to consolidate and expedite filed in this Court April 4, 1966).

July 19, 1965, the United States sought leave to intervene as of right as party plaintiff and to file objections to the desegregation plan submitted by the board. At the August 3, 1965 hearing on the plan, the district court denied the motion to intervene (R. 166) on October 4, 1965, the United States filed notice of appeal to this Court from the order denying intervention (R. 305). The panel found that "the motion was timely filed and should have been granted" (Slip Opinion p. 116).

V. ***No. 23,365, United States of America, et al. v. The Bossier Parish School Board***

This is the fourth appeal to this Court involving segregation in the Bossier Parish schools. See *United States* v. *Bossier Parish School Board,* 220 F. Supp. 243 (W.D. La. 1963), aff'd per curiam 336 F.2d 197 (5th Cir. 1964), cert. den. 379 U.S. 1000, an unsuccessful attempt by the United States to sue for desegregation prior to the 1964 Civil Rights Act. See also two prior appeals in the present suit, *sub nom. United States* v. *Bossier Parish School Board,* 349 F.2d 1020 (5th Cir. 1965) (per curiam) and *Bossier Parish School Board* v. *Lemon,* No. 22,675, 5th Cir., January 5, 1967 (not yet reported).

This suit was commenced in December 1964 by a group of Negro servicemen and their families who were assigned to the Barksdale Air Force Base near Bossier City, Louisiana; the United States intervened and brought this appeal.

The present appeal involves the "adequacy," under *Brown v. Board of Education*, 349 U.S. 297, 301, of a court-ordered plan of desegregation (R. Vol. II, 251-258; as amended R. Vol. II, 261-263). (NB The record on this appeal is in two volumes. Volume I consists of the record multilithed for use in 5th Cir. Case No. 22,675, a prior appeal. Volume II is marked as Case No. 23,365 and consists of 281 pages.)

Bossier Parish, which adjoins Caddo Parish in northwest Louisiana, is a rapidly growing area (R. II-40) which embraces both urban (Bossier City) and rural areas and several large federal installations, including the Barksdale Air Force Base. Its Superintendent of Schools described the system as the most federally impacted system of its size in the South (R. II-38). The Superintendent also described the areas as a "hard core segregation area" where people have "strong and fixed opinions in opposition to integration," and said in March 1965 that "Bossier Parish is not ready for integration" (R. I-56).[18]

The school system had (in the spring of 1965) 15,267 students, including 10,894 white pupils and 4,375 Negroes,

---

[18] The quoted remarks are from a written answer to an interrogatory inquiring what obstacles there were to complete desegregation in the 1965-66 term (R. Vol. I, 40). The Superintendent responded (R. Vol. I, 56) with the following:

> Bossier Parish, Louisiana can properly be termed a "hard core" segregation area. The people in Bossier Parish have strong and fixed opinions in opposition to integration. People here feel that negroes in Bossier Parish are treated fairly and with justice and there has been an unusual degree of racial harmony. Indeed, from the negroes in Bossier Parish there has been no desire expressed for integration of the races other than that which come from Barksdale Air Force Base; that is, from non-Bossier Parish negroes.
>
> In contrast to some other areas of the South which have maintained segregated school systems, Bossier Parish is not ready for integration.
>
> /s/ EMMETT COPE
>
> EMMETT COPE, Individually and on behalf of the Bossier Parish School Board

in 23 school buildings (R. Vol. I, 45-46). There were 17 all-white and 6 all-Negro schools (*Ibid.*). About 1,100 students live on the Barksdale Air Force Base, and approximately 4,400 students are "federally connected" (R. Vol. II. 36). The student population has a large turnover which includes an average of 1,000 to 1,500 newcomers each year, largely due to the federal installations and related industries (R. Vol. II. 38). The system received more than $1,860,000 for school construction from the Federal Government between 1951 and 1964 (R. Vol. I. 104), and also received substantial annual amounts of federal funds for maintenance and operation of the schools, including more than half a million dollars in November 1964 (R. Vol. I. 108).

There was no desegregation of the Bossier schools until September 1965 when twenty-five (25) Negroes were admitted to six previously all-white schools (R. Vol. II. 266). Until 1965, the schools were completely segregated with a system of dual school zones for Negroes and whites (R. Vol. II. 43-45). The 700 teachers in the system were also assigned on the basis of race (R. Vol. II. 175, 179). In school taxation district 13, the urban area, all Negro children, regardless of residence, were assigned to either Butler School (grades 1-6) or Mitchell School (grades 7-12) (R. Vol. I. 45-46; Vol. II. 160). White pupils in district 13 were assigned to elementary, junior high or high schools on the basis of geographic attendance areas reflected on maps which were revised annually to adjust to changing conditions (R. Vol. II, 44, 67-69, 159-161, 168). Similarly, there were dual zones in the rural areas, all pupils having been assigned on a dual zone racial basis (R. Vol. II. 127, 130). Under the segregated system pupils were placed in schools by assignment and not by choice (R. Vol. II. 130). The board also maintained separate

school buses, and bus route maps for Negroes and whites (R. Vol. II. 244-245).

After the trial judge in April 1965 ordered the board to submit a desegregation plan, the board appealed that order[19] but, as there was no stay in effect, submitted three alternative proposals for desegregation (R. Vol. II. 1-12). None of the proposals involved a start of desegregation until 1966, and the proposed completion dates ranged from 1970-71 (the board's first choice) to 1968-69. We omit any detailed description of the board's proposed plan, except to state that under the proposal all prior initial assignments—all of which were segregated—were "considered adequate", subject to a pupil's right to transfer to "the nearest formerly all-white or all-colored school" (R. II. 4). Although the plan was labeled as one considering both "freedom of choice" and "proximity" by the superintendent (R. Vol. II. 92), all Negro first graders were directed to register at the all-Negro Butler School and white children were directed to the white schools. The superintendent sought to justify this by his assumptions that the majority of Negroes would want to go to Butler, and that they would get better registration advice from teachers of their own race (R. Vol. II. 124-125). The private plaintiffs and the United States filed objections to the plan (R. Vol. II. 13-15, 30-33), and a hearing was held on July 28, 1965.

On July 28, 1965, the District Court entered an order requiring desegregation in September 1965, in grades 1 and 12 (R. Vol. II, 251-258). The United States promptly appealed (R. Vol. II, 258), and this Court within a few weeks vacated the judgment and remanded for reconsideration (R. Vol.

---

[19] This court rejected the board's arguments on appeal calling them a "bizarre excuse" for segregation. *Bossier Parish School Board* v. *Lemon*, No. 22,675, 5th Cir., January 5, 1967. Undaunted, the board promptly filed a rehearing petition, still resisting the order to desegregate in January 1967. Rehearing was denied February 6, 1967.

II, 260; see 349 F.2d 1020). The plan was then amended by the trial judge to permit desegregation in two additional grades in 1965 (R. Vol. II, 261-263). There were no other changes in the plan, and the United States then brought this appeal, in which the private plaintiffs were permitted to intervene.

The Court Ordered Plan, as Amended
(R. Vol. II, 251-258, 261-263)

1. *Rate of desegregation.*

The plan, as amended, provides for desegregation in three years, as follows:

School Year	*Grades Desegregated*
1965-66	1, 2, 11, 12
1966-67	1, 2, 3, 4, 9, 10, 11, 12
1967-68	All Grades

The plan also provided that all pupils newly entering the school system would be eligible for desegregation in 1965 without regard to their grades (R. Vol. II, 255).

2. *Method of assignment.*

a. *1965-66 school year.* Initial assignments, already made on a completely segregated dual racial zone basis were "considered adequate" subject to certain transfer rights (R. Vol. II, 251). Transfer provisions for the various grades affected were as follows:

Grade 1—Notice to be published in newspaper for three days advising that applications to first grade in any school could be made by applying in person at school board office during four day period (R. Vol. II, 252-25). As implemented, the board ran a notice of this provision for "Any Negro child . . . who desires to attend a formerly all-white

school" to apply in person at the school board office in Benton, Louisiana accompanied by his parents or guardian (R. Vol. II, 271).

Grades 2 and 11—The procedure prescribed in the order was similar to that for grade 1. The board's newspaper notice, said that "Any Negro child . . . who desires to attend a formerly all white school, will report . . . in person, accompanied by his or her parents or guardian to the School Board office at Benton, Louisiana." A three-day period was prescribed (R. Vol. II, 273).

Grade 12—The order provided that all 12th grade students, regardless of race, were to be mailed notices advising of the right to transfer to any school by applying in person, accompanied by parents, during a four day period (R. Vol. II, 252). The notice actually mailed to pupils (R. Vol. II, 269) said that pupils could apply for a transfer, but it contained no statement indicating that pupils would be accepted in any school regardless of race, or that grade 12 was desegregated, or any similar explanation (R. Vol. II, 269-270).

The court order did not grant an unconditional right of free choice. Rather, it provided that requested "transfers or assignments . . . shall not be unreasonably denied" (R. Vol. II, 253). It listed certain criteria to be applied in granting or denying requests, including desire of pupils and parents, availability of space and other facilities in the school to which transfer or assignment is requested, age of the pupil as compared with ages of pupils already attending the school, and availability of requested courses of study (R. Vol. II, 253-254). The order also provided that the board may "if it deems it advisable" assign a pupil to "another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence" (R. Vol. II, 254). All pupils

whose requests were denied were to get a notice setting forth specific reasons (R. Vol. II, 255).

b. *School years subsequent to 1965-66.* Only very general provision was made in the order with respect to the method of assignment in future years. The order provides only that "initial assignments . . . shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board . . . the right to place a pupil in a comparable school other than the school of his choice . . . closer to the pupil's residence" (R. Vol. II, 256). The order also provides that "Dual school districts on racial lines shall be abolished".

Because these provisions are so general, a variety of things are unclear. The plan does not state (1) whether school attendance lines and the feeder system will be used in some manner in the future; (2) whether once assigned to a school, pupils will be required to make an annual choice of schools or will remain where they previously were assigned unless they seek transfers; (3) what will be done if pupils indicate no preference; (4) whether pupils already attending a school will have priority over others choosing a school in the event of overcrowding; (5) or any definition of the "comparable school" discretion given to the school board.

3. *Notice and related procedures.*

The procedures ordered and utilized for the 1965-66 term were set forth in the discussion above. The order gives no details with respect to the procedures in other years except the general statement that the assignments will be "subject to all reasonable procedural requirements

that may be adopted and promulgated by" the school board (R. Vol. II, 257). This leaves unclear, for example, whether the choice and transfer procedures will be only for Negroes and not for whites as they were in grades 1, 2 and 11 in 1965; whether there will be individual notices or only newspaper advertisements; and whether the school board may adopt its proposal of having all Negroes register at Negro schools and all whites at white schools. Other unresolved issues related to the content of notices, the time for transfer, whether pupils and parents must appear in person at the school board office, etc. The plan deals with none of these matters.

4. *Transporation.*

The plan makes no mention of transportation facilities. In a somewhat confusing colloquy between the superintendent and the Court, during trial, the superintendent may have indicated an intention to desegregate buses (R. Vol. II, 101-102). The extent, if any, by which the prior pattern of segregated buses, and bus routes for Negroes and whites is to be changed is unclear.

5. *Faculty and staff desegregation.*

The plan makes no mention of faculty desegregation. The school authorities made clear that they had no plans to end the system of assigning faculties on a racial basis (R. Vol. II, 179-180). The faculty turnover rate was about 9.2% annually (R. Vol. II, 176).

6. *School connected activities, extra-curricular activities, etc.*

The plan contains no provision with respect to these matters.

7. *New construction.*

The plan makes no reference to planning new facilities or additions so as to eliminate segregation. At least two new buildings had been built and opened on a segregated basis during the three years superintendent Cope had been in office (R. Vol. II, 80).

8. *Unequal Negro school facilities.*

The plan makes no provision for steps to equalize educational opportunities for Negroes in the parish.

The schools operated for white and Negro children in Bossier Parish show considerable disparity in a number of qualitative aspects. The white high school (Bossier) for one district offers 53½ courses over a four year period, including two years of Latin, two years of French, two years of Spanish, and three years of art (R. Vol. II, 184-185). However, the Negro high school (Stikes) for the same district offers only 28 courses, and offers no Latin, French, or Spanish (R. Vol. II, 186). Another district's white high school (Airline) offers 43.5 courses, while the Negro high school (Mitchell) offers 30.5 (R. Vol. II, 189). Similarly, the white high school (Haughton) for a third district offers 40.5 courses, while the Negro high school (Princeton) offers 34 (R. Vol. II, 192). The Superintendent stated that the criterion for offering a course was:

> if a course is requested on the senior high level by as many as ten students we attempt to offer that course in that particular school. Yet, at the same time, there are other factors where maybe ten students have not applied as far as conditions are concerned in the other schools and I think that situation has to be taken into consideration (R. Vol. II, 109).

Disparities are found in other respects in addition to the number of course offerings. While there are two full time guidance counselors at Airline (white), there are none at Mitchell (Negro) (R. Vol. II, 190). In fact, while there generally are guidance counselors at the schools for whites in the parish, there are none at any of the Negro schools (R. Vol. II, 187, 194). At the Princeton school (Negro), there are 3.8 volumes of "approved books in good condition" per pupil, while at Haughton (white) in the same district there are 6.3 per pupil (R. Vol. II, 190-191).

Mr. William Stormer, of the United States Office of Education, Department of Health, Education, and Welfare, an expert in the evaluation of the quality of school plants, testified on his inspection of the Bossier Parish schools in the summer of 1965 (R. Vol. II, 195-198). Using the Lynn-McCormick Rating System which combines a number of weighted ratings to allow numerical comparisons between schools, he determined that the highest white school (Airline) ranked at 82 on the scale, while the highest Negro school (Mitchell) ranked at 16 (R. Vol. II, 199, 202). Fifteen of the seventeen white schools rated above the top Negro building (R. Vol. II, 202). When challenged upon cross-examination that there was really no dramatic difference between the Negro and white schools, he responded: "Yes, there is. I beg your pardon. For example, the wooden structures used at Stikes for what I presume to be elementary classrooms . . . there are no wooden structures at Curtis" (R. Vol. II, 209). Similarly, the structures used for elementary grades at Irion (Negro) are wooden, while those used for the same purpose at Benton (white) are not (R. Vol. II, 209). The home economics facilities at Stikes high school (Negro) are in a wooden frame two story structure, whereas similar facilities at Bossier high school (white) are in a modern main building (R. Vol. II, 200).

All of the Negro schools must use their gymnasiums as auditoriums, while Airline, Bossier, Benton, and Haughton schools which are all white have separate auditorium facilities (R. Vol. II, 200-201). The gymnasium floors in all of the Negro high schools are constructed of cement or asphalt tile surface, compared to wooden floors in all of the white high schools (R. Vol. II, 200).

9. *Periodic compliance reports.*

The plan makes no provision for periodic compliance reports to indicate the extent of desegregation under the plan. However, in September 1965, the board voluntarily filed a report indicating that 25 Negroes had been admitted into six formerly white schools (R. Vol. II, 266-267). No subsequent reports have been made.

VI. *No. 23,116, Davis v. East Baton Rouge Parish School Board*

The East Baton Rouge Parish school system includes the City of Baton Rouge, Louisiana's state capital, as well as rural areas in the parish. The system, in 1965, had 87 schools housing 54,894 pupils (R. 70) and about 2,300 teachers (R. 123). About 60% of the pupils and teachers were white and 40% were Negroes.[20] There were 33 all-Negro schools, 50 all-white schools, and 4 predominantly white schools attended by a few Negroes (R. 49-50, 93). Although this school desegregation litigation was commenced in 1956, the parish schools remained completely segregated until the court ordered a twelve year desegregation plan to begin in the 1963-64 term. The early litigation is described briefly in the note below.[21]

---

[20] There were 33,186 white pupils and 21,708 Negro pupils (R. 70-71).

[21] The board was enjoined on May 25, 1960, and ordered to desegregate with deliberate speed. This Court affirmed. *East Baton Rouge Parish*

In 1963, twenty-eight Negroes (of 38 applicants) were admitted to white schools at the 12th grade level (R. 93-94). In 1964, sixty-one Negroes (of 99 applicants) were admitted to white schools in the 11th and 12th grades (R. 99-100). Only four of the fifty-four white schools were desegregated (R. 93). No white pupils sought transfer to all-Negro schools (R. 61). No figures for 1965 appear of record, but apparently, about 130 Negroes were admitted to white schools in grades 1, 2, 10, 11 and 12 in September 1965.[22]

After the 1963 desegregation plan (R. 4-9; 219 F. Supp. at 885-887) had been in effect two years, the plaintiffs moved for amendment and acceleration of the plan, and made various objections to the manner in which it was administered (R. 11-28). Following a hearing (R. 170-251), the Court ordered the board to present an amended plan in accordance with its directions (R. 158-159, 242-250). An amended plan was presented and approved (R. 161-167). Plaintiffs appealed from the order approving the plan (R. 167).

School Board v. *Davis*, 289 F.2d 380 (5th Cir. 1961), cert. den. 368 U.S. 831 (1961). On January 22, 1962, no steps to implement desegregation having been taken by the board, plaintiffs sought further relief in the trial court. In March 1963, Judge West, expressing his disagreement with the *Brown* decision, nevertheless "reluctantly" ordered the school board to file a desegregation plan. *Davis* v. *East Baton Rouge Parish School Board*, 214 F. Supp. 624, 625, 626 (E.D. La. 1963). The board filed a plan to begin in 1964 and desegregate one grade a year for 12 years; the Court ordered desegregation to begin in 1963 under a grade-a-year plan. *Davis* v. *East Baton Rouge Parish School Board*, 219 F. Supp. 876 (E.D. La. 1963).

[22] This estimate is extrapolated from the School Board's original brief on this appeal where it is stated that a total of 219 Negroes were admitted to white schools in the three year period. (Brief of Appellees, pp. 6-7.) The record reflects that in the spring of 1965, before the plan was amended by court order, 89 Negroes (of 103 applicants) were accepted in white schools in grades 10, 11 and 12 (R. 107).

A. The 1965 Plan

1. *Rate of desegregation.*

The 1965 plan provided that desegregation be extended to all grades by September 1968 according to the following schedule (R. 162):

School Year	*Grades Desegregated*
1963-64 (under 1963 plan)	12
1964-65 (under 1963 plan)	11, 12
1965-66	1, 2, 10, 11, 12
1966-67	1, 2, 3, 4, 10, 11, 12
1967-68	1, 2, 3, 4, 5, 6, 7, 10, 11, 12
1968-69	all grades

Thus, under the plan one grade was desegregated in each of the first two years, 3 additional grades the third year, two grades the fourth year, three grades the fifth year, and two grades the sixth year of operation.

2. *Method of assignment.*

The plan provides that as additional grades were covered by the plan "new districts will be prepared providing the students living within the boundaries of such districts a choice of school to attend on a first come-first served basis without regard to race or color (R. 163). The plan also provides that students will be accepted "at any of the schools within their respective district" until such school is "filled," and that excess registrants shall be sent to the other school or schools in their district for registration (R. 164). It provides that no student shall be denied admission because of race (R. 184).

These provisions must be understood in the context of the board's practices and procedures. The board has maintained 100 school districts or geographic attendance areas

(R. 103). About 70% of the districts contained residences of both races (R. 103), and segregation was maintained by a dual system of attendance districts, with separate overlapping districts and maps for Negroes and whites (R. 74-76, 79-80). Elementary schools were designated as "feeder schools" for designated secondary schools, also on a segregated basis (R. 77, 84-85, 105). This method continues in effect in all grades not yet "desegregated" under the plan's schedule. In those grades which are nominally desegregated, the Negro and white zones are combined into multiple-school districts, so that each zone contains one or more white and one or more Negro schools. Pupils are allowed to choose either the white school or the Negro school in their geographic attendance district (R. 76-78, 83-84). If a pupil fails to make a choice, he remains in the segregated school where he was previously assigned under the pre-existing arrangement (R. 209). The plan makes no mention of abolishing the segregated "feeder system" which moves students on a racial basis if they express no choices.

3. *Notice and related procedure.*

The plan provides that principals and teachers be notified of the attendance districts and that the districts be advertised in the local news media. A registration day is also to be advertised for at least 30 days (R. 163). The superintendent is authorized to use a better method if he can devise one (R. 163-164). There is no provision for individual written notice to pupils or parents. The plan does not specify the content of the public announcements beyond stating that the boundaries and registration date will be advertised.

Similar procedures had been used under the 1963 plan (R. 92-93, 98, 107), in disregard of the court's prior order

that all pupils be given individual mailed notices of their transfer rights (R. 5).

4. *Transportation of pupils.*

The school system operates 250 buses which transport more than 25% of the pupils to school (R. 128-129). The plan provides that transportation will be furnished or not furnished in accordance with state laws and policies without regard to race (R. 164). The plan makes no reference to desegregation of buses or bus routes.

Students are segregated by race on the buses (R. 129). This policy was applied to the Negro pupils admitted to formerly white schools (R. 129, 211). The superintendent was questioned about this (R. 211):

> Q. Would you agree that the way it has been operating in the past is that Negro children when assigned to desegregated schools are still being taken to and from the school in segregated buses? A. Yes.
>
> Q. And my question is: Is there any reason why you would change that, beginning with this Fall and, if not, why not? A. I just have not thought about it.

Judge West sustained objections to questions about desegregating the buses ruling: "We are not interested in the School Bus situation right now" (R. 213).

5. *Faculty and staff segregation.*

The plan makes no provision for faculty desegregation. Judge West denied relief on the faculty issue (R. 246).

All faculties were completely segregated on the basis of race (R. 124-125). Negro supervisory personnel assigned to the central administration were segregated in a separate building (R. 125-126, 226-227). Teachers are assigned to

specific schools by the administration (R. 202). About 13 or 14 percent of the teachers are replaced each year in the regular turnover of personnel (R. 147-148).

6. *School connected activities, extra-curricular activities, etc.*

The plan makes no provision with respect to equal access to school connected activities, etc. without regard to race.

7. *New construction.*

The plan makes no reference to planning new facilities or additions to facilities so as to eliminate segregation.

At the time the trial was held, the school board was planning 17 new school buildings in the next five years (R. 130). The school system also made extensive use of temporary classroom building or "T-Buildings" (R. 53, 69). Plaintiffs proffered, but the court refused to consider, testimony of an expert witness, a school administration expert, that certain temporary buildings were arranged so as to preserve segregation. For example, temporary rooms were added to Negro schools while nearby white schools had vacant spaces (R. 267-271).

B. Aspects of the 1963 Plan

The 1963 plan expressly permitted the board to continue to make initial assignments on a racial basis (R. 5). As noted above, the board modified its dual zone procedure so that some Negro pupils were permitted to transfer out of segregated schools to the white schools in their areas. This transfer right was subject to a screening process in which Negro pupils were measured by a variety of criteria which had not been applied to white students attending the schools (R. 6-7). Ten Negro applicants were

rejected in 1963 and 38 were rejected in 1964 by application of these criteria. As an example, one Negro was refused admission to a white school on the ground that he was "nervous" (R. 110). In 1965 the court ruled that the screening criteria could no longer be used (R. 249).

C. Exclusion of Evidence on Adequacy of the Plan

The trial court refused to permit an expert witness, called by the plaintiffs, to be sworn or to testify on the sole ground that the witness was from Massachusetts. The court said: "I don't want someone from Massachusetts coming down to tell the Baton Rouge school board how to run their schools" (R. 228). The witness, Dr. Donald P. Mitchell, was experienced in educational administration and in making school surveys (R. 252-258). He is Executive Director of the New England School Development Council and a member of the Harvard University faculty (R. 261-262). The Court stated that Dr. Mitchell's testimony could be proffered by deposition and filed, but that the Court would not consider it (R. 228, 231).

Dr. Mitchell's deposition was taken and appears in the record at R. 251-287. He testified that the system "is still a segregated system that has slight deviations from that overall pattern" (R. 262); that the "procedures for initial pupil assignment, regardless of grade level, are definitely ones which separate the races" (R. 262); that the transportation was segregated (R. 263); that teachers and supervisors were segregated (R. 263). He said of the plan that "on the results of the last two years and this year approaching, unless the approach is changed, only a token result will come forth" (R. 266). He described the overlapping segregated bus routes as "a prohibitive operation" causing the taxpayers "quite a load" (R. 272-273). He regarded the freedom of choice plan as "a bankruptcy deci-

sion on the part of a local district" and said that the board's earlier policy of having geographic zones "made sense from an administrative point of view" (R. 273-274). He concluded that "The idea that the freedom of choice is democratic is completely hypocrisy because it only applies to the Negro students" (R. 275).